IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of case

Criminal Misc Application No. 540 of 2005

Bhuri & another

Versus

State & another

Date of decision :- 25-08-05

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date:- August 25, 2005 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.540 of 2005

1. Bhuri W/o Late Padam Singh
2. Mamta @ Mannu
   D/o late Padam Singh
   Both R/o village Baintwala
   P.S. Kashipur
   District U. S. Nagar .....Applicants

Versus

1. State of Uttaranchal
2. District & Sessions Judge
   U. S. Nagar .....Respondents

Dated: 25.8.2005

Hon'ble J.C.S. Rawat, J.

Heard Sri Bhupendra Singh Negi learned counsel for the applicants and Sri Amit Bhatt learned A.G.A. for the State.

The petition under section 482 Cr.P.C. has been filed to set aside the order dated 23.9.2004 and further to direct the respondent No.1 to re-summon the prosecution witnesses and to permit the applicants to cross-examine the prosecution witnesses.

Brief facts of the case are the on 19.11.2003 one-Ghanshyam Singh has lodged an FIR under section 302/201 I.P.C. against the applicants and the same was registered as case crime No.1034/2005 at police station Kashipur, District U. S. Nagar. Thereafter, the case was investigated and the chargesheet was submitted against the applicants. After framing of the charge, the trial was proceeded and the prosecution has produced four witnesses, namely Ghanshyam Singh (PW-1), Om Prakash (PW-2), Smt. Roopwati (PW-3) and Idrish

(PW4). The applicants were provided the Amicus Curiae to defend their case. It is alleged in the petition that the Amicus Curiae could not properly cross-examined the prosecution witnesses. The Amicus Curiae failed to raise important questions and facts pertaining to the case, due to which the case of the applicants could not be properly defended before the court below. During the trial, an application was moved by the applicants on 26.07.2004 alleging therein that they have engaged a private counsel and they wanted to re-examine the prosecution witnesses. It has been further alleged that the Amicus Curiae could not ask important questions and facts pertaining to the case. As such, the applicants have prayed that the witnesses already examined may be re-summoned and they may be permitted to re-examine the witnesses on the expenses of the applicants. The trial court after considering the application has rejected the same on 23.9.2004. Feeling aggrieved by this, the applicants have come up before this Court.

Perusal of the record reveals that the learned trial court has rejected the application on the ground that the applicants had made vague allegations and even they had not stated on what grounds the witnesses may be re-examined. The applicants have only state in the application dated 26.7.2004 that :-

> Þ;g fd mijkDr xokgk l; dN egRoi.k rF; iNu l; NV x;s g ftUgs U;k;fgr e iNk tkuk vko';d gÞ

It was the duty of the applicants to show the sound base for re-examination of the prosecution witnesses in the said application. The applicants should have

mentioned in the said application as to what points or questions are to be asked from the witnesses. During the course of the hearing of the petition, I specifically asked to the learned counsel for the applicants that what are the important questions, which are to be asked from the prosecution witnesses, but he is not able to answer of the query.

In view of the above, the petition is liable to be dismissed. The petition is dismissed accordingly.

(J. C. S. Rawat, J.)

Dated 25.8.2005

LSR